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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

STEVEN SCHMITZ ET AL
Plaintiff

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,
ET AL
Defendant

Case No: CV-14-834486

Judge: DEENA R CALABRESE

JOURNAL ENTRY

STIPULATED PROTECTIVE ORDER.
OSJ

Judge Signature

Date

FILED

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CLERK OF COURTS
CUYAHOGA COUNTY

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ESTATE OF STEVEN T. SCHMITZ and
YVETTE SCHMITZ, individually and as
Fiduciary of Estate of Steven T. Schmitz,
Deceased,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION, and
UNIVERSITY OF NOTRE DAME,

Defendants.

Case No. CV-14-834468

Hon. Deena R. Calabrese

YVETTE SCHMITZ AS FIDUCIARY OF
ESTATE OF STEVEN T. SCHMITZ,

Plaintiff,

v.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION, AND
UNIVERSITY OF NOTRE DAME,

Defendants.

Case No. CV-17-875751

STIPULATED PROTECTIVE ORDER

The parties to this Stipulated Protective Order have agreed that this Order shall govern the disclosure of **Confidential Material** in these consolidated actions (the "Actions"). Accordingly, it is ORDERED:

I. DEFINITIONS

1. This Protective Order (hereinafter, the "Order") shall govern only those materials produced in these Actions which have been or are deemed to comprise or

contain **Confidential Material**, as defined below, whether furnished by a party or third party, regardless of whether produced voluntarily or pursuant to a formal discovery request.

2. All materials produced or adduced in the course of discovery, including responses to discovery requests, deposition testimony and exhibits, and information derived directly therefrom (hereinafter collectively "documents"), shall be subject to this Order concerning **Confidential Material** as defined below. This Order is subject to the Local Rules of this Court and the Ohio Rules of Civil Procedure on matters of procedure and calculation of time periods.

3. As used in this Order, "**Confidential Material**" means: (a) information protected from disclosure by statute; (b) information that reveals trade secrets; (c) research, technical, commercial or financial information that the party has maintained as confidential; (d) medical information concerning any individual; (e) personal identifying information of any person who is not a party to these Actions; (f) personnel or employment records of a person who is not a party to these Actions; or (g) other information the disclosure of which would breach a legal or contractual obligation. Information or documents that are available to the public may not be designated as **Confidential Material**.

4. **Confidential Material** may include any type or classification of information which is so designated by the producing party in accordance with the provisions of this Order, or is otherwise deemed **Confidential Material** hereby, whether it be a document, information contained in a document, information revealed during a deposition or other examination pursuant to the rules of Court, information revealed in an

interrogatory answer or any other discovery response, to the extent that they reveal information designated by the party producing such information as **Confidential Material** under the terms of this Order.

II. DESIGNATIONS

5. A party may designate a document as **Confidential Material** only after review of the document by an attorney or a party appearing *pro se* who has in good faith determined that the document contains **Confidential Material** as defined in this Order.

6. A party may designate a document as **Confidential Material** for protection under this Order by placing or affixing the words "CONFIDENTIAL" or "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" on the document and on all copies in a manner that will not interfere with the legibility of the document. As used in this Order, "copies" include electronic images, duplicates, extracts, summaries, or descriptions that contain the **Confidential Material**. The marking "CONFIDENTIAL" or "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" shall be applied prior to or at the time the documents are produced or disclosed. Applying the marking "CONFIDENTIAL" or "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" to a document does not mean that the document has any status or protection by statute or otherwise, except to the extent and for the purposes of this Order. Any copies that are made of any documents marked "CONFIDENTIAL" or "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" shall also be so marked, except that indices, electronic databases or lists of documents that do not contain substantial portions or images of the text of marked documents and do not otherwise disclose the substance of the **Confidential Material** are not required to be marked.

7. Counsel for a party may designate portions of the transcript of a deposition, or other examination conducted pursuant to the rules of Court in these Actions, as **Confidential Material** on the record during the deposition or examination. Further, any party present at the deposition or examination may, within thirty (30) business days of such party's receipt of a copy of the official transcript of such testimony and by written notice served on all other interested parties in these Actions, designate any portion of the testimony as **Confidential Material**. The right to make such designation shall be waived unless properly noticed before the end of the thirty-day period. Upon being informed that any portion of a transcript has been designated as **Confidential Material**, each party must promptly cause each copy in their custody, possession, or control to be so marked. All designations of testimony as **Confidential Material** must conform to the criteria set forth in paragraphs 1 to 5 above including, without limitation, the definition of **Confidential Material**, and the requirement that such designations be made in good faith.

III. DISCLOSURES AND USE OF CONFIDENTIAL MATERIAL

8. A party shall not give, show or otherwise make available or communicate any **Confidential Material** produced by another party in any way to any person or entity other than the following:

- a) The Court, the jury, Court personnel assisting the Court, and court reporters, stenographers or other persons involved in taking or transcribing testimony, in these Actions;
- b) The officers and employees of a party with responsibility for the party's participation in these Actions or who a party deems

necessary to assist in the prosecution or defense of these Actions, counsel representing such party in these Actions (including both outside counsel and in-house counsel), and such counsel's litigation assistants, paralegals, secretarial or other clerical personnel;

c) Third-party vendors, such as e-discovery providers, copy services, graphics services, investigators, litigation support services and other people or entities retained by a party or a party's counsel for the purpose of assisting that party or counsel in these Actions, and the principals, employees and contractors with which such persons are associated;

d) A person with specialized knowledge or experience in a matter pertinent to these Actions who has been retained by a party or a party's counsel to serve as an expert witness or as a consultant in these Actions, including their employees and clerical assistants, provided such person completes and signs the Affidavit attached to this Order as Exhibit A;

e) A witness at any deposition or other examination conducted pursuant to the rules of Court in these Actions, and such witness's counsel, provided that before providing any **Confidential Material** to any witness pursuant to this sub-paragraph, such witness shall be provided with a copy of this Order, and shall thereafter be bound by this Order; to the extent the witness is

covered by any other subsection to this paragraph, the provisions of this subsection shall not apply;

f) any mediator that the parties engage in these Actions or that the Court appoints, including supporting personnel, provided such person completes and signs the Affidavit attached to this Order as Exhibit A;

g) Authors or lawful recipients of the designated **Confidential Material**; and

h) Other persons only by written consent of the producing party or upon order of the Court in these Actions and on such conditions as may be agreed upon or so ordered.

i) In the event a party makes any **Confidential Material** of a producing party available or known to a party witness or non-party witness at a deposition in these Actions, the disclosing party shall take such steps as may be necessary to ensure that such witness:

(i) has received a copy of and understands the restrictions set forth in this Order; (ii) shall not disclose or permit the disclosure of such **Confidential Material** to any other person or entity; and (iii) shall not retain a copy of any document containing any **Confidential Material** of the producing party, except with respect to a copy of all exhibits marked at such deposition which may be provided, subject to the continuing confidentiality obligations described in

this Order, for the sole purpose of facilitating the witness's review of the witness transcript.

9. A party receiving documents designated as **Confidential Material** under this Order may use such documents solely for the prosecution and defense of these Actions and any appeals thereto, and not for any business, commercial, or competitive purpose or in any other litigation proceeding, absent consent from the party producing such documents. Nothing contained in this Order, however, will affect or restrict the rights of any party with respect to its own documents or information produced in these Actions. The designation of documents as **Confidential Material** shall not itself affect the rights of the producing party (or the producing party's authorized representative, if any) to give or disclose the **Confidential Material** to any person for any reason, and such giving or disclosing of **Confidential Material** by the producing party shall not be deemed a waiver of this Order. Nothing herein shall impose any restrictions on the use or disclosure by a party or witness of documents, material or information obtained by such party or witness independently of the discovery proceedings in these Actions, whether or not such documents, material or information are also obtained through discovery proceedings in these Actions.

IV. INADVERTENT DESIGNATIONS & DISCLOSURES

10. In the event that a producing party inadvertently fails to designate **Confidential Material** as "CONFIDENTIAL" or "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER," or incorrectly so designates **Confidential Material**, that party may make a late designation or change the designation by so notifying in writing all parties to whom the **Confidential Material** has been disclosed. A party must serve such

written notification at least thirty (30) days before the close of discovery in these Actions.

An inadvertent failure to designate a document as **Confidential Material** does not, standing alone, waive the right to so designate the document. If a party designates a document as **Confidential Material** after it was initially produced, the receiving party, on notification of the designation, must make a reasonable effort to assure that the document is treated in accordance with the provisions of this Order. No party shall be found to have violated this Order for failing to maintain the confidentiality of material during a time when that material has not been designated **Confidential Material**, even where the failure to so designate was inadvertent and where the material is subsequently designated **Confidential Material**.

11. In the event any party shall inadvertently disclose **Confidential Material** to another party or third party not otherwise permitted to receive such **Confidential Material**, the party making the inadvertent disclosure shall, upon learning of the disclosure:

- a) Promptly notify the person or entity to whom the disclosure was made that the disclosure contains **Confidential Material** protected by this Order; and
- b) Promptly make all reasonable and necessary efforts to obtain the return of and preclude dissemination or use of the **Confidential Material** by the person or entity to whom disclosure was inadvertently made.

12. The inadvertent production or disclosure of any document protected by the attorney-client privilege, work product protection or a joint defense/common interest

privilege (the "Inadvertent Production") shall not constitute or be deemed as a waiver or forfeiture of any such privilege or immunity. If, after learning of the Inadvertent Production, the producing party wishes to assert its privilege or protection, it shall promptly send to the receiving party a written request for return of the materials produced as part of the Inadvertent Production. Notwithstanding the procedures outlined in (a) - (d) below, within five (5) business days of receiving such a request, the receiving party shall return all materials produced as part of the Inadvertent Production to the producing party, shall destroy all copies that it may have made in connection with the Inadvertent Production, and shall not utilize any information received as part of the Inadvertent Production for any purpose. If the receiving party shared any materials received as part of the Inadvertent Production with any other party, person or entity, it shall promptly notify the person or entity to whom the disclosure was made that the disclosure contains **Confidential Material** protected by this Order, and promptly make all reasonable and necessary efforts to obtain the return of and preclude dissemination or use of the **Confidential Material** by the person or entity to whom disclosure was inadvertently made.

- a) If the receiving party wishes to contest that the Inadvertent Production is protected by the attorney-client privilege, work product protection or a joint defense/common interest privilege, the receiving party shall promptly so notify the producing party in writing;
- b) Within five (5) business days after receiving such notification, the producing party shall provide to the receiving party, a description

of the basis for the claim of privilege or immunity for the Inadvertent Production;

- c) Within ten (10) business days after receiving such description, the receiving party may file, in accordance with paragraph 12 herein, a motion to compel production of the Inadvertent Production. If such a motion is filed, the producing party shall have the burden of proving that the Inadvertent Production in dispute is protected by attorney-client privilege, work product immunity or a joint defense/common interest privilege. Pending the ruling on such motion, the receiving party may not utilize any materials or information received in connection with the Inadvertent Production for any purpose;
- d) In the event that the receiving party generates documents or other work product and such derivative documents or materials contain information derived from any undisputed Inadvertent Production (the "Derivative Documents"), the receiving party shall either destroy such Derivative Documents or redact from them all applicable privileged and work-product information of the producing party, in each case in a manner such that the derivative information cannot in any way be identified, retrieved or reproduced.

V. FILING OF CONFIDENTIAL MATERIAL

13. This Order authorizes the filing of documents under seal in the following manner. Any party wishing to file a document designated as **Confidential Material** shall: (a) provisionally file the document under seal and subject to this Protective Order; and (b) file at the same time a public-record version of the document with the **Confidential Material** excluded. Provided, however, that any document containing **Confidential Material** that is unrelated to a party's proposed use of the document or unnecessary to the Court's consideration of the document will not be filed under seal if the portions of such document containing **Confidential Material** can be redacted in a feasible manner. The producing party that designated the document as containing **Confidential Material** shall cooperate in good faith to respond to timely and reasonable requests by another party to file redacted versions of documents, including assisting the filing party to identify those portions of a document the producing party deems to contain **Confidential Material**.

VI. CHALLENGES TO PARTY DESIGNATIONS

14. The designation of any material or document as **Confidential Material** hereunder is subject to challenge by any party to these Actions. The following procedure shall apply to any such challenge.

- a) **Meet and Confer.** A party challenging the designation of **Confidential Material** must do so in good faith and must begin the process by conferring directly with counsel for the designating party. In conferring, the challenging party must explain the basis for its belief that the confidentiality designation was not proper and

must give the designating party an opportunity to review the designated material, to reconsider the designation, and, if no change in designation is offered, to explain the basis for the designation. The designating party must respond to the challenge within ten (10) business days.

b) **Judicial Intervention.** A party that elects to challenge a confidentiality designation may file and serve a motion that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements of this procedure. The burden of persuasion in any such challenge proceeding shall be on the party that designated the information disclosed as **Confidential Material**. Until the Court rules on the challenge, all parties shall continue to treat the materials as **Confidential Material** under the terms of this Order.

c) **Action by the Court.** Applications to the Court for an order relating to materials or documents designated **Confidential Material** shall be by motion, unless the Court directs otherwise.

VII. THIRD PARTY OBLIGATIONS

15. In the event that any party receives a notice of deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar request to disclose any **Confidential Material**, and the party reasonably believes that it is legally

required to inform or seek permission from a third party, the party believing it is subject to such legal obligation shall promptly notify the party requesting such **Confidential Material** of such obligation and shall, within fifteen (15) business days of receiving such notice or request, notify such third party about the same so that such third party may seek a protective order or other reasonably appropriate remedy, as applicable, in furtherance of its interests. In the event that the third party does not, within fifteen (15) business days of receipt of such a notice, file a motion for a protective order or otherwise undertake another reasonably appropriate remedy to protect its interests, the party receiving the request shall, unless and to the extent otherwise legally or contractually prohibited from doing so, comply with the request and produce the **Confidential Material**.

VIII. OTHER OBLIGATIONS

16. Use of Confidential Documents or Information at Trial or Hearings.

Under this Protective Order, a Party may use and present to the jury **Confidential Material** at the trial of these consolidated cases or at a hearing before this Court. Nothing in this Order shall be construed to prevent the admissibility of any document, material, or information (**Confidential Material** or otherwise) at any trial or hearing. A party that intends to present, or which anticipates that another party may present **Confidential Material** at a hearing or trial, shall bring that issue to the Court's and Parties' attention by motion or in a pretrial memorandum without disclosing the **Confidential Material**. The Court may thereafter make such orders and rules that (a) do not prevent the use of **Confidential Material** at a trial or hearing, but (b) to the greatest extent possible limits the disclosure of **Confidential Material** at a trial or hearing to those persons (including but not limited to jurors in these consolidated cases) who are set

forth in paragraph eight (8) above and (c) are required to govern the use of such documents or information at trial.

17. **Confidential Material Subpoenaed or Ordered Produced in Other**

Litigation. If a receiving party is served with a subpoena, notice of deposition, interrogatory, request for documents, civil investigative demand, or an order issued in other litigation that would compel disclosure of any material or document designated in these Actions as **Confidential Material**, the receiving party must so notify the designating party, in writing, immediately, and in no event more than, three (3) court days after receiving the subpoena or order. Such notification must include a copy of the subpoena, notice of deposition, interrogatory, request for documents, civil investigative demand, or court order. The receiving party also must immediately deliver a copy of this Order to the party who caused the subpoena or order to issue in the other litigation and inform such party that some or all of the material covered by the subpoena or order is the subject of this Order for the purpose of alerting the interested persons to the existence of this Order and affording the designating party in this case an opportunity to protect its **Confidential Material** in the court from which the subpoena or order issued. In the event that the designating party does not, within fifteen (15) business days of receiving notice of a request as set forth above, file a motion for a protective order or take steps in furtherance of another reasonably appropriate remedy, the party receiving the request may, unless and to the extent otherwise legally or contractually prohibited from doing so, comply with the request and produce the **Confidential Material**. Notwithstanding anything to the contrary in this Order, the obligations set forth in this paragraph shall

remain in effect so long as a party has in its possession, custody or control **Confidential Material** produced by another party to these Actions.

18. **Obligations on Conclusion of Litigation.** Notwithstanding anything to the contrary in this Order and unless otherwise agreed upon or properly ordered by the Court in these Actions, this Order shall remain in full force and effect following any dismissal or entry of final judgment in these Actions which is not subject to further appeal. Within thirty (30) calendar days of the entry of any dismissal or final judgment not subject to further appeal, all **Confidential Material** and documents produced by a party and marked "CONFIDENTIAL" or "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" under this Order, including copies as defined in ¶ 3(a), shall be destroyed by the party in possession, custody or control of such documents, and the party in possession shall certify in writing to the producing party that it has done so. Notwithstanding the above requirements to destroy documents, counsel to any obligated party may retain: (a) attorney work product, including an index which refers or relates to designated **Confidential Material**, so long as that work product does not duplicate verbatim substantial portions of **Confidential Material**; and (b) one complete set of all documents is filed with the Court, including those filed under seal. Notwithstanding anything to the contrary in this Order, any **Confidential Material** so retained shall continue to be perpetually protected under the provisions of this Order. Any counsel to a party in these Actions may use his or her properly retained work product in subsequent litigation, provided that such use does not result in any disclosure or use of the **Confidential Material** of any producing party in these Actions, and such counsel shall

remain otherwise obligated under this Order with respect to all **Confidential Material** produced in these Actions.

19. **Order Subject to Modification.** This Order shall be subject to modification by the Court on its own initiative or on motion of a party or any other person with standing concerning the subject matter.

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AGREED BY:

s/ Sanford A. Meizlish

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APPROVED AND ORDERED BY:

 7-8-2019

Hon. Deena R. Calabrese

Court of Common Pleas, Cuyahoga County